

Office of Chief Counsel Internal Revenue Service

memorandum

CC:MSR:AOK:OKL:TL-N-7247-99

ALDarnold

date: MAY 1 1 2000

to: Chief, Examination Division, Arkansas-Oklahoma District

Attn: Chief, Examination Branch II

from: District Counsel, Arkansas-Oklahoma District

subject: Request for Advisory Opinion

Taxpayers:
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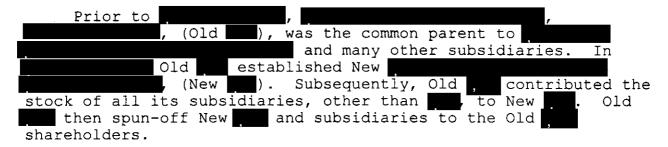
DISCLOSURE STATEMENT

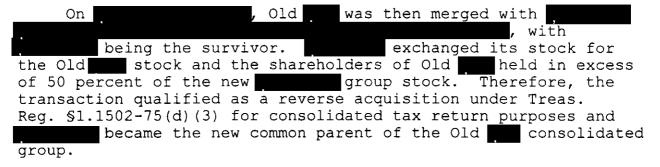
This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

FACTS

By memorandum dated December 7, 1999, you requested our views as to the filing requirements of the entities involved in a series of reorganization events in





Following this series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of transactions, New changed its name to the series of the s

For , , filed a short period return for the period ended , (months and days), using TIN . That return was posted as a tax period return. The same entity, under the name filed a 12-month return, also using TIN . That return included days of the old process is (post merger) income, New is income for the first months and days of the Service posted this return as a duplicate return since a return was already posted for the tax period.

DISCUSSION

Treas. Reg. \$1.1502-75(d)(3), which addressed reverse acquisitions, provides in pertinent part that if a corporation (hereinafter referred to as the first corporation) acquires either stock or substantially all the assets of a second

corporation in exchange for stock of the first corporation, and the stockholders (immediately before the acquisition) of the second corporation, as a result of owning stock of the second corporation, own (immediately after the acquisition) more than 50 percent of the fair market value of the outstanding stock of the first corporation, then any group of which the first corporation was the common parent immediately before the acquisition shall cease to exist as of the date of acquisition, and any group of which the second corporation was the common parent immediately before the acquisition shall be treated as remaining in existence with the first corporation becoming the common parent of the group.

Treas. Reg. $\S1.1502-76(b)(5)$, Ex. 2(c) provides an example where X acquires all of P's assets in exchange for more than 50 percent of X's stock in a reorganization constituting a reverse acquisition under Treas. Reg. \S \S 1.1502-75(d)(3), with the X group terminating and the P group surviving with X as its common parent. The example goes on to explain that P's items for the portion of Year 1 ending with the acquisition are treated as the items of the common parent that must be included in the P group's return for Year 1, and X's items are treated as the items of a subsidiary included in the P group's return for the portion of Year 1 for which X is a member.

In the instant case, Old merged into , with the Old shareholders owning percent of the new stock. Under the regulations cited above, the Old group is treated as remaining in existence but is the new common parent.

You inquired as to the following:

- 1. Should and and both have filed federal income tax returns for the same tax year (??
- 2. If yes, wouldn't produced be required to obtain a new separate TIN?
- 4. If no, then should , , , (New), have filed a short period return for months and days of income related to the non-month entities?

5. Should (Old prior to the merger with prior

First, we believe that the consolidated group, was correct to file a short year return for the pre-merger portion of You should, however, be aware that Treas. Reg. \$1.1502-76(b)(ii) applies an "end of the day" rule in determining the day that a corporation becomes or ceases to become a member of a consolidated group. Under this provision, the pre-merger portion of would be from through you would be from through you would be from through you would be from you would be group.

The short period return should have included only days' income, that earned from you have you through you have included only days' income, that earned from you have you have you have included only days' income, that earned from you have included only days'

Treas. Reg. §1.1502-75(a)(2) states that a group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year unless it has an election to discontinue filing consolidated returns under paragraph (c) of this section.

We also believe that _______ as the new common parent, was correct to file the full-year _____ return for the Old ______ consolidated group. Under Treas. Reg. §1.1502-76(b)(5)Ex. 2(c), the ______ income for the last _____ days of _____, (the post-merger period) should be reported on that return and treated as the income from a subsidiary included in the Old _____ group for the portion of the year that ______ was a member of the group.

The group's return was properly filed under the TIN of the new common parent, as the TIN previously used by Old, should have been "retired" when that entity ceased to exist as a result of the merger into

Rev. Rul. 73-526, 1973-2 C.B. 404, provides that the previously assigned identifying number should be used by the surviving corporation in a statutory merger and in a reincorporation qualifying as reorganization under I.R.C. \S 368(a)(1)(F). was the surviving corporation in the merger with Old the provided provided by I.R.C. \S 368(a)(1)(F).

group for purposes of executing consents and that entity is also liable for the entire consolidated tax of the Old group soley because it is the successor of the former common parent. See, Treas. Reg. \$1.1502-6. It is appropriate for the TIN used on the consolidated return to be that of the entity which is primarily liable for the consolidated tax of the group. Since the new common parent, is liable as the successor to Old we believe that its TIN should be reported on the group's full-year return.

You inquired as to whether

(New should have reported its income for the pre-merger portion of on state of the pre-merger portion of on the same day as the merger of Old and the spin-off of New cocurred on the same day as the merger of Old and the spin-off of New cocurred on the same day as the merger of Old and the spin-off of New cocurred prior to the merger income, would be included on the succurred prior to the merger, New cocurred prior to the merger, New cocurred prior to the merger, New components as well as the income of the subsidiaries which New consolidated return for the period from the Old components, only until and including the date of the spin-off.

New , may elect to file its own consolidated return for the remaining days of consolidated return would not be required. See, Treas. Reg. \$1.1502-75(a)(2), discussed above.

With this memorandum, we are closing our file. However, if you have any questions, or need further information, please feel free to contact Attorney Ann L. Darnold at (405) 297-4810.

BRUCE K. MENEELY Assistant District Counsel

cc: Assistant Regional Counsel (TL), Midstates Region